Electronic notification in Public Administration: constitutional guarantees and protection of the right to due process

Original Article
ISSN 3084-75160 (Online)
Received: 05-05-25
Accepted: 15-07-25
Online: 24-07-25

Heral Amaro Caldas[1,a]

[1] Universidad Nacional Mayor de San Marcos, Lima, Perú.
[a] Lawyer of the Master's Degree in Criminal Law.

ABSTRACT

The present article has as objective to analyze electronic notification in Public Administration from the perspective of constitutional guarantees, in order to assess its compatibility with the protection of the fundamental right to due process within the framework of the constitutional State governed by the rule of law. The research adopts a legal-normative and dogmatic method, based on the examination of the Political Constitution of Peru, the American Convention on Human Rights, the General Administrative Procedure Law, and Law No. 31736, as well as on the critical analysis of the regulatory provisions issued by various entities of Public Administration. The results reveal a structural tension between the pursuit of administrative efficiency and speed through the use of electronic means and the requirements of constitutional guarantees. Regulations and administrative practices are identified that disregard principles such as the express consent of the administered party, technological accessibility, and the effective confirmation of receipt of the notification, which generates legal uncertainty and weakens the effective protection of the right to due process. It is concluded that the implementation of electronic notification in Public Administration, in certain cases, is incompatible with constitutional guarantees and the effective protection of due process.

Keywords: *guarantees; due process; electronic notification; deposit; receipt; effectiveness.*

La notificación electrónica en la Administración pública: garantismo constitucional y tutela del derecho al debido proceso

RESUMEN

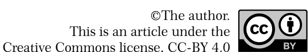
El presente artículo tiene como objetivo analizar la notificación electrónica en la Administración pública desde la perspectiva del garantismo constitucional, a fin de evaluar su compatibilidad con la tutela del derecho fundamental al debido proceso en el marco del Estado constitucional de derecho. La investigación adopta un método jurídico-normativo y dogmático, sustentado en el examen de la Constitución Política del Perú, la Convención Americana sobre Derechos Humanos, la Ley del Procedimiento Administrativo General y la Ley N.° 31736, así como en el análisis crítico de la normativa reglamentaria emitida por diversas entidades de la Administración pública. Los resultados revelan una tensión estructural entre la búsqueda de eficiencia y celeridad administrativa mediante el uso de medios electrónicos y las exigencias del garantismo constitucional. Se identifican regulaciones y prácticas administrativas que desconocen principios como el consentimiento expreso del administrado, la accesibilidad tecnológica y la confirmación efectiva de la recepción de la notificación, lo que genera inseguridad jurídica y debilita la tutela efectiva del derecho al debido proceso. Se concluye que la implementación de la notificación electrónica en la Administración pública, en determinados supuestos, resulta incompatible con el garantismo constitucional y la tutela efectiva del debido proceso.

Palabras clave: *garantismo; debido proceso; notificación electrónica; habilitación; depósito; recepción; eficacia.*

Cite as

Amaro Caldas, H. (2025). Electronic notification in Public Administration: constitutional guarantees and protection of the right to due process. *Revista jurídica peruana Desafíos en Derecho, 2*(2), 166-79. https://doi.org/10.37711/RJPDD.2025.2.2.9

©The author.
This is an article under the
Creative Commons license, CC-BY 4.0



INTRODUCTION

Digital transformation in Public Administration represents one of the deepest processes of institutional modernization in the contemporary State. Inspired by the principles of efficiency, celerity, and transparency, this evolution has progressively transferred administrative procedures to the electronic environment, replacing in-person and documentary interactions with automated systems and digital platforms. However, what apparently constitutes an unquestionable advance toward State modernization contains complex legal and constitutional implications that require analysis from the perspective of legal garantism.

Indeed, the digitalization of the public apparatus, by prioritizing the optimization of services and the reduction of bureaucracy, has generated a "structural paradox"; the more administrative management is automated, the greater the risk of depersonalizing and even dehumanizing the relationship between the Administration and the citizen. Behind the ideal of technological efficiency there may be hidden a management model in which the citizen ceases to be an active subject of rights and becomes a mere user of electronic systems, conditioned by algorithms and automated records that determine access to justice and, consequently, may limit the right of defense and contradiction.

In this context, electronic notification through an electronic mailbox emerges as one of the most representative—and at the same time most controversial—tools of the digital transformation of the State. Its declared purpose is to provide greater speed, economy, and traceability to administrative communications; however, its practical application has raised a series of tensions between administrative efficiency and the constitutional guarantees of due procedure. Such tensions have been made evident in the case law of the Third Specialized Chamber in Administrative Litigation, among others, in Case Files No. 10455-2022-0-1801-JR-CA-04 and No. 13544-2023-0-1801-JR-CA-13.

Thus, questions arise that test the garantist validity of the digital model: can the State impose the mandatory nature of electronic notification in a context marked by the digital gap and inequality? To what extent can the initial consent for the use of electronic means be considered a permanent and irrevocable adhesion? Is the act of notification legally valid if alert messages have not been issued to the email or telephone registered by the administered party? Is the mere record of deposit in the administered party's electronic mailbox sufficient for the purposes of notification? Is it constitutional to presume receipt of the administrative act in an automated manner, without express confirmation by the administered party? Finally, could the unjustified reduction of the guarantees of due procedure, the right of defense, and the right of contradiction constitute grounds for functional liability for administrative operators?

The answer to these questions is found in the Political Constitution of Peru (1993), in the Single Ordered Text (TUO) of Law No. 27444, General Administrative Procedure Law (LPAG) (2021), and in Law No. 31736, Law that Regulates Administrative Notification through Electronic Mailbox (2023). These norms guarantee the protection of the rights of the administered party in the digital environment, ensuring that no special provision imposes less favorable conditions, in accordance with Article II of the preliminary title of the LPAG and the second final complementary provision of Law No. 31736.

In this way, the justification of the study lies in showing that the digital transformation of the State cannot develop apart from respect for constitutional guarantees. It must be ensured that technology functions as an instrument at the service of the citizen and not as a mechanism that limits rights. Finally, the main objective is to evaluate, from a constitutional and garantist perspective, the compatibility of electronic notification with the principles of due process, due procedure, and legal certainty in administrative law.

https://doi.org/10.37711/RJPDD.2025.2.2.9 *Rev jurídica peruana Desafíos en Derecho*. 2025; 2(2): 166-79 UDH

Finally, the main objective of the present study is to analyze electronic notification in Public Administration from the perspective of constitutional garantism, in order to evaluate its compatibility with the effective protection of the fundamental right to due process. In this sense, it critically examines whether both the normative regulation and the administrative practice of electronic notification respect the structural guarantees of due procedure, in particular the right of defense, the express consent of the administered party, technological accessibility, and certainty in the receipt of administrative acts, all within the framework of the constitutional State of law.

METHODS

Methodological approach

The research employed the legal-normative and dogmatic method, oriented toward the systematic, axiological, and teleological interpretation of the norms that regulate administrative action in Peru, in order to evaluate the coherence and constitutional validity of electronic notification with respect to the principles of legality, due process, and the right of defense.

Theoretical grounding of the method

Garantism and the constitutional limits of administrative power

Legal garantism underpins the research by conceiving law as a rational and constitutional limit on power. In Public Administration, this model requires controls that ensure impartiality, motivation, and effective protection, given that the State acts as both authority and interested party. The study is based on constitutional supremacy (art. 51) and judicial control (art. 148) to ensure that all administrative action is legitimate, rational, and reviewable. In addition, it incorporates the doctrine of due process as a binding principle, demonstrating that due procedure is essential for the legitimacy of public power.

Analysis strategy

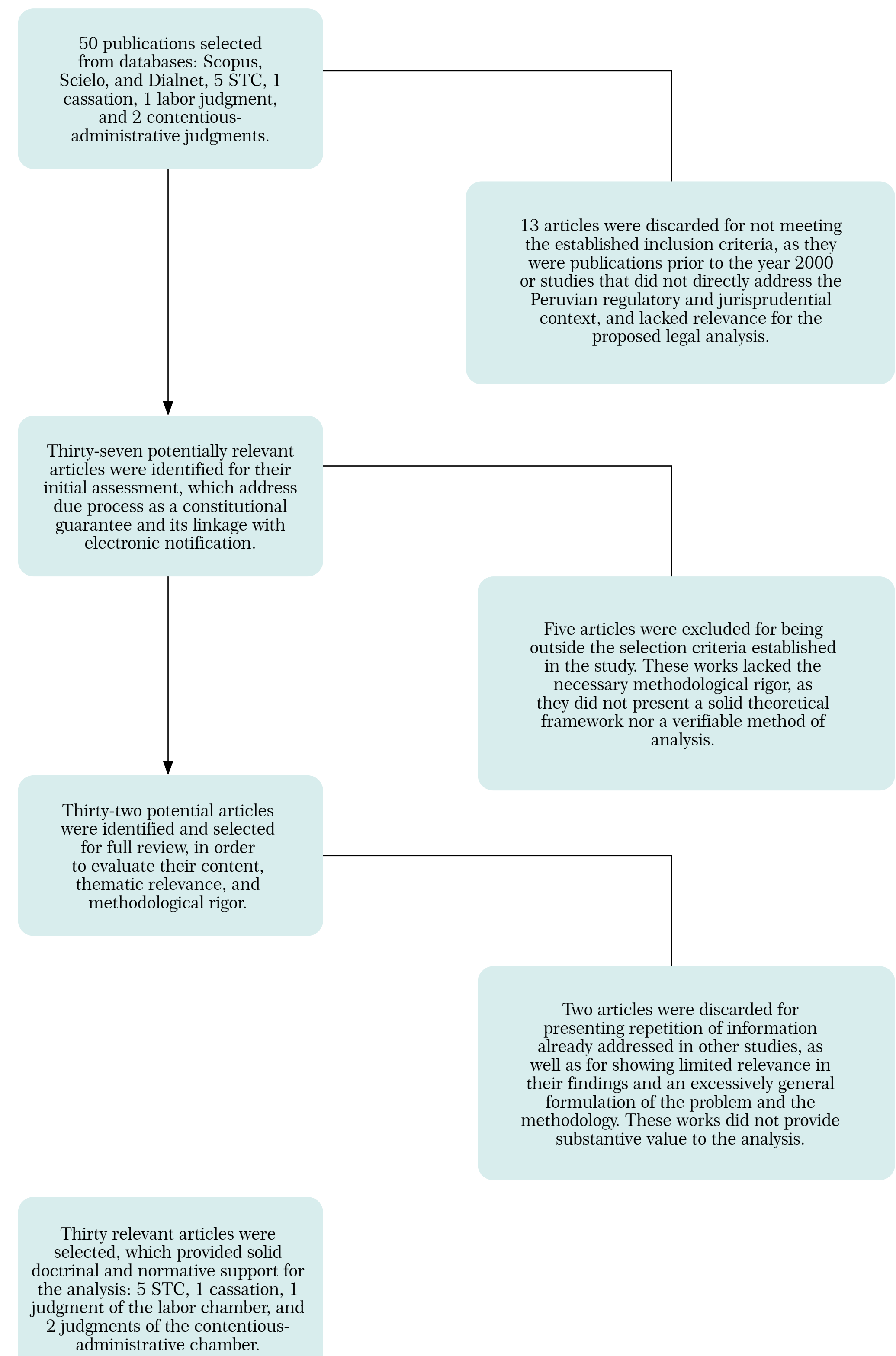
The research integrates doctrinal, normative, and jurisprudential analysis, taking as sources the American Convention on Human Rights, the Peruvian Constitution, the LPAG, Law No. 31736, and the pronouncements of the Constitutional Court and the Inter-American Court. Through a systematic and comparative interpretation, it evaluates how garantist principles and due process guarantees are concretized in electronic notification and limit administrative power in the digital era. The information was obtained from academic databases such as Scopus, Web of Science, Scielo, and Dialnet, using combinations of keywords related to electronic notification and due process. Finally, a rigorous process of selection and validation of doctrinal, normative, and jurisprudential sources was applied to ensure the methodological soundness of the study.

DEVELOPMENT AND DISCUSSION

The research analyzed fifty academic publications and nine judicial decisions—five from the Constitutional Court, one cassation ruling, one from the labor chamber, and two from the contentious-administrative chamber. After applying criteria of relevance and methodological rigor, works published prior to the year 2020 were discarded, as well as those that did not address the Peruvian normative context or that lacked verifiable theoretical support.

Finally, thirty academic articles and nine judicial decisions were selected, which constituted a solid doctrinal, normative, and jurisprudential basis to examine the legal regime of electronic notification and its relationship with the principles of due process, legal certainty, and effective administrative protection.

Figure 1
Methodological sequence in the process of searching and selecting articles



https://doi.org/10.37711/RJPDD.2025.2.2.9 *Rev jurídica peruana Desafíos en Derecho*. 2025; 2(2): 166-79

Table 1
Articles analyzed by database

Databases	No. of articles	%
Dialnet	14	36
Scielo	12	31
Scopus	4	10
Sentencias	9	23
Total	39	100

Guaranteeism and the constitutional limits of administrative power

According to Luigi Ferrajoli (1995, p. 851), guaranteeism is a concept that admits, at least, three fundamental meanings. First, it can be understood as a normative model of the rule of law and democracy oriented toward the limitation of power through its subjection to the law. Second, guaranteeism constitutes a theory of law insofar as it formulates the principles and conditions that ensure the validity and legitimacy of the legal order. Finally, the author conceives it as a political philosophy, centered on the defense of fundamental rights against abuses of power and on the rationalization of the exercise of authority.

In this line, legal guaranteeism is established as one of the pillars of the constitutional State governed by the rule of law, by maintaining that law should not be an instrument of power, but rather its rational and moral limit, subject to constitutional supremacy. According to Ferrajoli (2014, p. 53), its essential purpose is to maximize the protection of fundamental rights and to restrict the discretion of public power, ensuring that every state action remains within the margins of the Constitution and the law.

In the sphere of public Administration, guaranteeism acquires a particular dimension, given that the State fulfills a dual function, acting as a “deciding authority” and, simultaneously, as an “interested party in the procedure.” This condition imposes the need for normative and procedural limits that guarantee impartiality, the motivation of administrative acts, and the effective protection of the rights of the administered. The absence of such counterbalances would lead to arbitrariness and to an exercise disconnected from law and lacking constitutional legitimacy (Rojas López, 2009, p. 376).

From this perspective, guaranteeism does not seek to restrict the legitimate action of the State, but to rationalize the exercise of power through its subordination to law. By virtue of the principle of legality, administrative authority is configured as a bound power, such that the authority may act only within the limits expressly established by the norm. The Political Constitution of Peru reaffirms this postulate by enshrining, in Article 51, the supremacy of the Constitution over every norm of the legal system and, in Article 148, the judicial control of acts of the public Administration subject to administrative law as an essential guarantee for the effective protection of the rights and interests of the administered.

In this way, the guaranteeist model of limited and bound power is projected over all public law, imposing restrictions not only on the Administration, but also on the legislator, the Judiciary, and private parties who exercise public functions. Constitutional guarantees are thus configured not only as instruments for the protection of individual rights, but as structural mechanisms for the preservation of legality, the separation of powers, and the legitimacy of the constitutional order. Ultimately, guaranteeism represents an advanced form of constitutionalism, which balances “authority and liberty,” “power and law,” and reaffirms that only a power subject to the Constitution can be considered legitimate (Ferrajoli, 2014, p. 59).

The guarantees of due process

In constitutional doctrine, due process is established as a structural limit on the exercise of state power and as an essential guarantee of individual liberty. In this sense, Landa Arroyo (2017, p. 173) maintains that this right has its origin in the English and North American legal tradition, where it emerged as a parameter of control against excesses by authorities. From that perspective, no act that restricts liberty or property can be legitimate if it is not carried out within a legally established, reasonable, and fair procedure. "Due process, therefore, constitutes a guarantee against the arbitrariness of power and an instrument that materializes justice in the exercise of public authority" (Salmón and Blanco, 2012, p. 24).

The American Convention on Human Rights expressly recognizes the right to due process in its Article 8, which must be interpreted in accordance with Articles 9, 24, 25, and 27 of the same treaty. Within this framework, the Convention develops the essential principles of due process, such as the presumption of innocence, the right of defense, the reasoning of decisions, and effective judicial protection. These principles, as Rodríguez Rescia (1998, p. 1296) points out, configure a "protective guaranteeism" that places the citizen under the protection of law against a State that, in exercising investigative or sanctioning functions, could incur excesses. In this way, due process becomes the core of the inter-American system for the protection of human rights.

In Peru, due process is enshrined in paragraph 3 of Article 139 of the Constitution and has been developed both by the jurisprudence of the Constitutional Court (Cases No. 00643-2022-PA/TC Lambayeque [2024], No. 02403-2023-PA/TC Lima [2025], No. 04264-2023-PA/TC Lima [2024], No. 07094-2013-AA/TC Huaura [2015]) and by the Supreme Court of Justice of the Republic (Cassation No. 546-2022/Lima). It does not constitute a mere procedural formality, but rather a structural principle that limits any action of public power that may affect rights or legitimate interests. In this sense, due process functions as a constitutional barrier against arbitrariness, guaranteeing justice, rationality, and the legitimacy of state decisions, and ensuring that the exercise of public power remains within the margins of legality and reasonableness required by the constitutional State governed by the rule of law.

Due process fulfills a dual function in the legal system: it is simultaneously a guiding principle of the constitutional order and a fundamental right of the person. In its objective dimension, it imposes on State bodies the obligation to act with impartiality, rationality, and respect for the normative order; while, in its subjective dimension, it guarantees every person the right to a fair, adversarial procedure that respects the right of defense (Landa Arroyo, 2017, p. 175).

Finally, from a substantive perspective, due process demands that public decisions be reasonable and proportional, so that the exercise of power finds justification in legal reasons and not in discretionary wills. In its formal dimension, it guarantees the right to timely notification, to adversarial proceedings, to defense, and to the motivation of administrative and judicial acts, pillars that sustain the procedural equality of the parties. Indeed, due process constitutes the pillar of constitutional guaranteeism, ensuring that authority acts with legitimacy and power is exercised in accordance with law, while its violation gives rise to arbitrariness and legal uncertainty (Ferrer, 2015, p. 156).

Due process as a guarantee projected over all administrative action

The extension of the principle-right of due process to the administrative sphere constitutes one of the most significant advances of contemporary constitutionalism and of the social and democratic State governed by the rule of law. Initially conceived as a guarantee inherent to

https://doi.org/10.37711/RJPDD.2025.2.2.9 *Rev jurídica peruana Desafíos en Derecho*. 2025; 2(2): 166-79

the jurisdictional function, due process has transcended that sphere to become a structural limit on all state action that may affect the rights or legitimate interests of citizens. In this way, it not only protects justice in the courts, but also requires that every manifestation of public power be subject to criteria of legality, reasonableness, and respect for the right of defense (Martínez Gutiérrez, 2021, p. 215).

Landa Arroyo (2002, p. 448) maintains that due process fulfills a dual function: "simultaneously a guiding principle of the constitutional order and a fundamental right of the person." In line with this, both the Inter-American Court of Human Rights (Case of the Constitutional Court of Peru v. Peru) and the Constitutional Court of Peru (Case No. 03741-2004-AA/TC, 2005) have indicated that this right is not limited to the judicial sphere, but is projected over all administrative action capable of affecting the rights of the administered.

Public Administration, in exercising sanctioning, resolutory, or decision-making powers, must comply with the same standards of impartiality, motivation, reasonableness, and respect for the right of defense that govern judicial action. As Ferrajoli (2014, p. 59) notes, public law—and particularly administrative law—cannot operate with unlimited discretion, but is subordinated to a legally bound power, derived from the principles of legality and constitutional supremacy. This subjection ensures that the effectiveness of the administrative apparatus is not achieved at the expense of fundamental rights.

Article IV, paragraph 1.2, of the TUO of the LPAG (Supreme Decree No. 004-2019-JUS) establishes due procedure as a guiding principle of administrative action, guaranteeing to the administered substantive rights such as notification, access to the file, submission of defenses, offering of evidence, reasoned decision, and challenge of acts. These elements ensure transparency, objectivity, and effective protection.

In this context, notification acquires special relevance, as it allows the administered to exercise defense in a timely manner. Its deficiency violates the core of due process and compromises legal certainty.

Administrative notification in Public Administration

The right to notification is a fundamental guarantee of due administrative procedure and an indispensable condition for an administrative act to produce legal effects. According to Article 16.1 of the LPAG, an act only becomes effective once it has been notified in accordance with the law, which protects legal certainty and ensures that the administered party has prior knowledge of the decisions that affect them.

Article 18 of the LPAG establishes that notification must be carried out ex officio by the issuing entity, guaranteeing transparency and publicity of administrative acts. This allows the administered party to exercise their right of defense, by challenging, questioning, or complying with the act within the legal time limits. The omission or deficiency of notification compromises the validity of the procedure and violates the principle of due process.

Administrative notification modalities according to the TUO of the LPAG

Article 20 of the LPAG expressly and hierarchically regulates the modalities of notification of administrative acts. Numeral 20.1 of said rule establishes a mandatory order of precedence among three main notification modalities, which must be applied successively and not discretionarily by the Administration: (i) personal or physical notification, carried out at the domicile of the administered party or at the one indicated for that purpose (art. 20.1.1); (ii) notification by certified mail or other postal means that ensures delivery with

acknowledgment of receipt (art. 20.1.2); and (iii) notification by publication, applicable only when the domicile of the administered party is unknown or is located in an inaccessible place (art. 20.1.3) (Morón Urbina, 2023, pp. 306–307).

Guzmán (2020) argues that "personal notification is preferred over the other modalities, given that it more effectively ensures that the administered party becomes aware of the act" (p. 415). In this sense, the hierarchical order of notifications established in Article 20 of the LPAG fulfills a guarantee-oriented purpose by prioritizing the modalities that provide greater certainty regarding receipt of the administrative act before resorting to supplementary means, such as publication.

Numeral 20.2 reinforces the mandatory nature of this scheme by prohibiting the authority from altering the order of precedence, under penalty of nullity. This provision restricts administrative discretion and guarantees respect for legality and due procedure, preventing defenselessness.

Likewise, numeral 20.3 extends these guarantees to summonses, service of process, requirements, and analogous acts, as they constitute formal manifestations that condition the exercise of the right of defense.

Finally, numeral 20.4 incorporates electronic notification as a valid modality of communication, including email and the institutional electronic mailbox—later developed by Law No. 31736—aimed at reconciling administrative efficiency with legal certainty. In this context, Cubero Marcos (2018) warns that notifications by electronic means require a meticulous analysis and examination different from that of paper notifications, due to the technical and security particularities inherent to the digital environment.

Electronic notification in administrative procedure: analysis of the TUO of the LPAG and Law No. 31736

The regulatory development of electronic notification in Peru, regulated in numeral 4 of Article 20 of the General Administrative Procedure Law and later developed by Law No. 31736, constitutes a significant advance in the process of modernization and digitalization of the administrative function. In this sense, Elliot Segura (2014, p. 263) maintains that this system seeks to reconcile speed, efficiency, and procedural economy with the principles of legal certainty and effective protection of the rights of the administered parties, consolidating a digitally efficient Administration, always subject to the limits of due procedure as a structural guarantee of the constitutional State governed by the rule of law.

The mandatory nature of notification through the electronic mailbox

Article 2 of Legislative Decree No. 1452, which amended numeral 20.4 of Article 20 of the LPAG, empowers the Executive Branch to establish, through a supreme decree, the mandatory use of the electronic mailbox in specific procedures, subject to a favorable opinion from the Presidency of the Council of Ministers and the Ministry of Justice and Human Rights. This provision allows for the progressive implementation of the electronic system in sectors with adequate infrastructure and mechanisms to protect the rights of the administered parties.

Consequently, administrative entities must regulate the mandatory use of the electronic mailbox based on criteria of accessibility, reasonableness, and proportionality, in accordance with the mandates established in Article 8 of the American Convention on Human Rights, Articles 51 and 148 of the Political Constitution of Peru, Article II of the preliminary title of the LPAG, and the second final complementary provision of Law No. 31736. Likewise, administrative action in matters of electronic notifications is subject to constitutional and

judicial control mechanisms, which guarantee its conformity with fundamental rights and with the principles of legality and due procedure.

Failure to comply with these obligations constitutes functional liability for public servants or officials who act outside the applicable regulatory framework, in accordance with numeral 9 of Article 261.1 of the LPAG, which affects the validity and effectiveness of the administrative acts issued.

From a guarantee-oriented position—such as that which inspires Spanish legislation—the imposition of this mandatory nature could only be justified with respect to certain subjects, such as legal persons, legal professionals, or entities with sufficient technological capacity, insofar as this responds to a reasonable structural differentiation aimed at balancing administrative effectiveness with the protection of the right of defense (Clérigues, 2017, p. 70).

Likewise, following the guarantee-oriented approach of the LPAG itself, it could initially be provided that the mandatory nature of electronic notification be restricted solely to administrative acts favorable to the administered party, insofar as in such cases there is no impact on rights or legal interests.

On the other hand, it is indispensable to provide for the regulation of the revocation of the consent granted by the administered party for the use of the electronic mailbox, especially when, due to reasons of connectivity, accessibility, disability, or digital vulnerability, the administered party cannot regularly access the required technological means. The absence of a withdrawal mechanism could violate the principle of autonomy of will and the right of defense, generating material inequality between those who have adequate technological resources and those who lack them (Alonso, 2013, p. 35).

Consequently, administrative digitalization is only valid when technology is subordinated to fundamental rights, transforming efficiency into justice and preventing innovation from becoming an obstacle to due process.

Express consent of the administered party and activation of the electronic mailbox

According to numeral 4 of Article 20 of the LPAG and Article 4 of Law No. 31736, the Administration may only activate the electronic mailbox when the administered party has granted their free, prior, and informed consent to be incorporated into the electronic notification system. By virtue of such consent, the entity must generate a user account and a personal access password, ensuring the confidentiality, authenticity, and integrity of communications.

The creation of the electronic mailbox does not constitute a technical formality, but rather the establishment of an official and exclusive communication channel between the Administration and the administered party, whose actions acquire full legal validity once deposited in said medium, in accordance with the deadlines and records established by the regulation.

It should be noted that neither the LPAG nor Law No. 31736 authorize the ex officio activation of the electronic mailbox. The absence of this power reaffirms the voluntary nature of consent, which acts as a condition of validity of the procedure and guarantees the right of the administered party to choose traditional means of notification when technological, geographical, or personal limitations exist that affect access to the digital environment.

A paradigmatic case regarding the infringement of the right of defense derived from the unilateral activation of the electronic mailbox is found in Case File No. 04264-2023-PA/TC Lima (2024). In said proceeding, the National Superintendency of Labor Inspection (Sunafil) electronically notified the administered party without the latter having registered their email

address or mobile phone number, thereby contravening Directive No. 002-2020-SUNAFIL/GG and Article 20.4 of the LPAG.

The Constitutional Court determined that the entity did not prove receipt or confirmation of the notification, given that the administered party only registered their email address on August 23, 2021, several months after the challenged act. Consequently, it declared that said notification lacked legal effectiveness for having been carried out without express consent and in contravention of the guarantees of due procedure.

First notification through the electronic mailbox

Numeral 1 of Article 5 of Law No. 31736 provides that, once the electronic mailbox has been activated with the express consent of the administered party, the administrative entity is empowered to carry out notifications through that medium. In this way, the mandatory nature of electronic notification is activated from the first notification carried out through the mailbox, which definitively transforms the communicative relationship between the Administration and the citizen.

However, the law does not contemplate the possibility of revoking consent, limiting it to the moment of activation. This omission generates tensions between administrative efficiency and the protection of fundamental rights such as the right of defense, procedural good faith, and freedom to choose the means of notification. From a guarantee-oriented perspective, the administered party should be recognized the power to revoke or modify their consent when conditions exist that prevent effective access to the system, such as technical failures or digital gaps, in observance of the principles of reasonableness and proportionality.

The implementation of mandatory electronic notifications (MEN) must balance technological modernization with the principles of accessibility, equality, and legal certainty (Leiva López, 2022, p. 293). Its effectiveness depends on the institutional capacity of the State, system interoperability, and user training, in order to avoid defenselessness or digital exclusion, contrary to the guarantee-oriented spirit of Law No. 31736.

Sending of informational alerts in electronic notification

Article 4 of Law No. 31736 imposes on the Public Administration the obligation to issue informational alerts to the email address and mobile phone previously registered by the administered party each time an administrative act is deposited in their electronic mailbox. These alerts, although they do not constitute notification in the strict sense, do constitute a requirement of validity of electronic notification, insofar as their purpose is to guarantee effective communication and timely knowledge of the administrative act.

From a constitutional perspective, the informational alert operates as a complementary guarantee mechanism within the digital notification system, ensuring that the administered party is not left in a situation of defenselessness due to technical causes or due to the lack of constant monitoring of the electronic mailbox.

Resolution No. 034-2022-SUNAFIL/TFL-First Chamber (2022) establishes a relevant criterion by recognizing that the omission in sending informational alerts violates the right of defense, as it prevents the administered party from timely knowledge of the actions that impose obligations on them. The tribunal specifies that the validity of electronic notification does not depend solely on the formal deposit in the mailbox, but on the effective guarantee of communication that allows the administered party to exercise their defense and actively participate in the procedure, in accordance with the principle of prohibition of defenselessness, provided for in Article 139, subsection 14, of the Constitution.

In this sense, informational alerts constitute an essential element of the guarantee-oriented system of electronic notification by materializing the duty of diligence and transparency of the Administration (Puntriano, 2023). Their compliance ensures the validity of administrative acts and reinforces citizen confidence in the use of digital means, demonstrating that technological transformation is only legitimate if it preserves and expands the guarantees inherent to the constitutional State governed by the rule of law.

Proof of deposit of the administrative act

According to Article 5 of Law No. 31736, the deposit of the administrative act in the electronic mailbox constitutes a formal act of the Administration, perfected with the automatic generation of the proof of deposit. This proof, of a probative nature, certifies the effective upload of the document into the system and indicates the date, time, and issuing entity, ensuring traceability, transparency, and legal certainty in the face of potential disputes. However, by itself, it does not produce full legal effects, as it does not guarantee the real and timely knowledge of the act by the administered party.

Therefore, the validity of electronic notification requires the concurrence of three essential elements: (i) the deposit of the act in the electronic mailbox, (ii) the issuance of effective informational alerts, and (iii) the proof of receipt containing confirmation of receipt by the administered party, in accordance with the principles of due procedure, effective protection, and legal certainty.

This criterion was reaffirmed by the Constitutional Court in Case File No. 02403-2023-PA/TC Lima (2025) (OEFA case), when examining the validity of Article 15.5 of the Electronic Mailbox Regulation, RCD No. 000010-2020-OEFA-CD, which considered notification effective with the sole proof of deposit. The Court warned that said provision violated numeral 2 of Article 25 of the TUO of the LPAG and Supreme Decree No. 002-2020-MINAM, which establish that electronic notification takes effect only when it is recorded as having been received by the administered party.

Consequently, constitutional jurisprudence specifies that the proof of deposit has instrumental and probative value, but does not equate to the act of notification. The legal effectiveness of the latter requires accrediting the effective knowledge of the administered party, in protection of legal certainty, procedural good faith, and the right of defense.

Proof of receipt and confirmation by the administered party

According to numeral 6 of Article 5 of Law No. 31736, notification is only considered validly carried out when the administered party, within a period of five business days from the deposit of the act in their electronic mailbox, expressly confirms its receipt. This electronic acknowledgment of receipt is not a mere formal procedure, but the unequivocal manifestation of real knowledge of the administrative act, an indispensable condition to guarantee the full exercise of the right of defense and respect for due procedure.

However, in administrative practice, a worrying tendency is observed to replace such confirmation with automatic mechanisms generated by the computer systems themselves, which record a “proof of receipt” even without the intervention of the administered party, which unjustifiably reduces the administrative guarantee of the right of defense.

This practice constitutes a presumption of knowledge incompatible with the principles of legality, reasonableness, and effective protection, by converting a substantial guarantee of the administered party into a mere procedural fiction. Such interpretation violates the guarantee-oriented essence of administrative procedure, as presumed knowledge of the act is equivalent, in practice, to deprivation of the right of contradiction and defense.

From a reading consistent with the Constitution and with inter-American standards on due process, the absence of confirmation within the legal time limit should not automatically validate notification. By virtue of Article 8.1 of Law No. 31736, the Administration is obliged to retry communication through one of the means provided for in Article 20 of the TUO of the LPAG, ensuring certain and verifiable knowledge of the act (Espinoza, 2023). Only in this way is the material validity of Article 139, subsections 3 and 14, of the Constitution preserved, which enshrines the right to due process and the right of defense.

In conclusion, proof of receipt and confirmation by the administered party is not a secondary formality, but an essential condition of validity of the act of notification. Its omission, automation, or substitution without the express will of the administered party distorts the guarantee-oriented model of electronic notification, undermines legal certainty, and erodes legitimate trust in the actions of the Public Administration.

Legal uncertainty in the implementation of electronic notifications

The deficient regulation and implementation of electronic notifications by various administrative entities has generated a scenario of legal uncertainty contrary to the principles of legality, effective protection, and legitimate trust recognized in the Constitution, the LPAG, and Law No. 31736. In view of this, constitutional and contentious-administrative judges must assume an active role in substantive judicial control, not only declaring the nullity of irregular acts, but also determining functional liability for manifest illegality provided for in numeral 9 of Article 261.1 of the TUO of the LPAG, in order to consolidate a culture of public responsibility and guarantee the real validity of the rule of law.

Likewise, the Ombudsman's Office and civil society organizations must strengthen their participation in the supervision of administrative legality by promoting popular actions against regulations contrary to the constitutional order. The articulation between the Judiciary, control bodies, and social actors is essential to ensure a legitimate, transparent electronic notification system that respects the fundamental guarantees of the administered party.

Proposals for regulatory reform of the electronic notification regime

A comprehensive reform of Law No. 31736 is proposed to strengthen the guarantees of the administered party and legal certainty, under the following terms:

(i) Consent to enable the electronic mailbox must be free, express, and revocable, avoiding its automatic imposition. (ii) A reversal procedure mechanism that allows the temporary use of traditional means when digital access is limited or impossible. (iii) Differentiated application of mandatory use: mandatory use should apply only to the State, legal persons, and professionals, remaining optional for natural persons for reasons of equality and accessibility (Ararteko, 2021, p. 123). (iv) Favorable administrative acts must be mandatorily notified electronically, without affecting rights. (v) Effectiveness conditioned on confirmation of receipt: the validity of any electronic notification must depend on the express confirmation of the administered party, as an expression of procedural good faith and a guarantee of effective knowledge of the administrative act. (vi) Integration with guarantee-oriented standards: reforms must be aligned with the principles of due process, legality, equality, and effective protection recognized in the Constitution, the LPAG, and Law No. 31736, ensuring that administrative digitalization is always subordinated to the protection of the rights of the administered parties.

CONCLUSIONS

The research concludes that electronic notification in the Public Administration, as it is currently regulated and applied by various state entities, presents serious deficiencies from

https://doi.org/10.37711/RJPDD.2025.2.2.9 *Rev jurídica peruana Desafíos en Derecho*. 2025; 2(2): 166-79

the perspective of constitutional guaranteeism, as it does not fully ensure protection of the fundamental right to due process. In particular, the imposition of electronic mechanisms without free, express, and revocable consent of the administered party, the absence of effective guarantees of technological accessibility, and the lack of certainty regarding the real receipt of notifications violate the right of defense and generate legal uncertainty. Consequently, it is affirmed that administrative digitalization cannot be erected as an end in itself nor prevail over constitutional guarantees, and it is essential that the regulatory and regulatory design of electronic notification be subordinated to the principles of the constitutional State governed by the rule of law and to the guarantee-oriented model, ensuring that technological efficiency is compatible with the effective protection of the fundamental rights of the administered party. The implementation of electronic notification represents an advance in the modernization of the State, but its constitutional validity depends on technology being subordinated to fundamental rights.

Digitalization, as Ararteko (2021, p. 123) warns, cannot be imposed as a dogma of administrative efficiency, but as an instrument of access, equity, and justice, whose legitimacy is measured by its capacity to strengthen the defense of the administered party and not to restrict it.

The express consent of the administered party, the effective issuance of informational alerts, and confirmation of receipt are essential conditions for the validity of electronic notification. Their omission or automation without citizen intervention violates the guarantee-oriented model of administrative procedure and distorts the protective function of the law. Consequently, the technological modernization of the State will only be legally valid if it preserves the non-waivable core of due process, ensuring that effectiveness never prevails over justice.

Funding sources
The research was carried out with own resources.

Conflict of interest statement
The author declares having no conflict of interest.

REFERENCES

Alonso González, L. M. (2013). Notificaciones electrónicas obligatorias (NEO) en materia tributaria. *Crónica Tributaria. Nueva Época*, *4*(149), 33-66. https://cronicatributaria.ief.es/ief/ct/index.php/cronica-tributaria/article/view/508

Ararteko. (2021). *Capítulo IX. Notificaciones electrónicas: especial referencia a las personas físicas no obligadas a relacionarse con la Administración pública por medios electrónicos*. En *Administración digital y relaciones con la ciudadanía: su aplicación a las administraciones públicas vascas* (pp. 123-126). https://ararteko.eus/apl/descargas/admdigital/primeraparteIX.pdf

Casación N.° 546-2022/Lima. (2023, 13 de abril). Corte Suprema de Justicia de la República, Quinta Sala de Derecho Constitucional y Social Transitoria (Cabello Matamala, C. J.). https://cdn.www.gob.pe/uploads/document/file/5085758/5SDCST-RC-546-2022-LIMA.pdf?v=1693930178

Clérigues Rodríguez-Moldes, J. E. (2017). El régimen de la notificación electrónica en España. *Actualidad Jurídica Uría Menéndez*, (46). https://www.uria.com/documentos/publicaciones/5451/documento/foro_esp01.pdf?id=7130&forceDownload=true

Constitución Política del Perú. 29 de diciembre de 1993 (Perú). *Artículo 51* https://lpderecho.pe/constitucion-politica-peru-actualizada/

Cubero Marcos, J. I. (2018). ¿Son válidas las notificaciones practicadas mediante correo electrónico? *Revista de Administración Pública*, (204), 133-163. https://doi.org/10.18042/cepc/rap.204.05

Elliot Segura, A. (2014). Implementación de la notificación electrónica en la Administración pública peruana. *Vox Iuris*, (27), 261-267. https://repositorio.usmp.edu.pe/bitstream/handle/20.500.12727/1011/Articulo%2012.pdf?sequence=1&isAllowed=y

Espinoza, K. J. (2023, 8 de mayo). *Implicancias de la Ley 31736, Ley que regula la notificación administrativa mediante casilla electrónica*. LP Pasión por el Derecho. https://lpderecho.pe/implicancias-ley-31736-regula-notificacion-administrativa-casilla-electronica/

Expediente N.° 00643-2022-PA/TC Lambayeque. (2024, 23 de febrero). Sala Primera del Tribunal Constitucional (Monteagudo Valdez, M.). https://tc.gob.pe/jurisprudencia/2024/00643-2022-AA.pdf

Expediente N.° 02403-2023-PA/TC Lima. (2025, 21 de agosto). Sala Primera del Tribunal Constitucional (Monteagudo Valdez, M.). https://www.tc.gob.pe/jurisprudencia/2025/02403-2023-AA.pdf

Expediente N.° 03741-2004-AA/TC Lima. (2005, 14 de noviembre). Plano Jurisdiccional del Tribunal Constitucional (Alva Orlandini, J., Bardelli Lartitigoyen, J. B., Gonzales Ojeda, M., García Toma, V., Vergara Gotelli, J., y Landa Arroyo, C.). https://www.tc.gob.pe/jurisprudencia/2006/03741-2004-AA.pdf

Expediente N.° 04264-2023-PA/TC Lima. (2024, 17 de julio). Sala Segunda del Tribunal Constitucional (Gutiérrez Ticse, G.). https://tc.gob.pe/jurisprudencia/2024/04264-2023-AA.pdf

Expediente N.° 07094-2013-AA/TC Huaura. (2015, 9 de septiembre). Sala Segunda del Tribunal Constitucional (Ledesma Narváez, M., Blume Fortini, E., y Ramos Núñez, C.). https://www.tc.gob.pe/jurisprudencia/2018/07094-2013-AA.pdf

Ferrajoli, L. (1995). *Derecho y razón. Teoría del garantismo penal*. Trotta.

Ferrajoli, L. (2014). La actualidad del pensamiento de Cesare Beccaria. En P. Andrés Ibáñez. (Dir.), *Jueces para la democracia. Información y debate* (pp. 51-63). https://www.juecesdemocracia.es/wp-content/uploads/2017/01/revista-79-marzo-2014.pdf

Ferrer, F. J. (2015). El debido proceso desde la perspectiva de la Corte Interamericana de Derechos Humanos. *Revista Jurídica de la Universidad de Palermo*, *14*(1), 155-184. https://www.palermo.edu/derecho/revista_juridica/pub-14/Revista_Juridica_Ano14-N1_06.pdf

Guzmán, C. (2020). *Manual del procedimiento administrativo general*. Instituto Pacífico.

Landa Arroyo, C. (2002). El derecho fundamental al debido proceso y a la tutela jurisdiccional. *Pensamiento Constitucional*, *8*(8), 445-461. https://revistas.pucp.edu.pe/index.php/pensamientoconstitucional/article/view/3287/3129

Landa Arroyo, C. (2017). *Los derechos fundamentales*. Fondo Editorial de la Pontificia Universidad Católica del Perú.

Leiva López, A. D. (2022). La regulación de la relación electrónica. en particular: el incumplimiento de la obligación de relacionarse electrónicamente y la validez y práctica de las notificaciones electrónicas. *Revista Aragonesa de Administración Pública*, (58), 291-313. https://dialnet.unirioja.es/descarga/articulo/8514005.pdf

Ley N.° 31736, Ley que regula la Notificación Administrativa mediante Casilla Electrónica. (2023, 4 de mayo). Congreso de la República. Diario oficial *El Peruano*, 05/05/2023. https://busquedas.elperuano.pe/dispositivo/NL/2174980-1

Martínez Gutiérrez, Rubén. (2021). Elementos para la configuración de la administración digital. *Revista de Derecho Administrativo*, (20), 212-233. https://revistas.pucp.edu.pe/index.php/derechoadministrativo/article/view/25210

Morón Urbina, J. C. (2023). *Comentarios a la Ley de Procedimiento Administrativo General. Texto Único Ordenado de la Ley N.° 27444 (Decreto Supremo N.° 004-2019-JUS)* (17.ª ed.). Gaceta Jurídica.

Puntriano, C. (2023). *Nuevas reglas sobre la casilla de SUNAFIL*. *Agenda Laboral*. Estudio Muñiz. https://www.munizlaw.com/assets/pdf/67991973.pdf

Resolución N.° 034-2022-SUNAFIL/TFL-Primera Sala. (2022, 10 de enero). Tribunal de Fiscalización Laboral Primera Sala. https://img.lpderecho.pe/wp-content/uploads/2022/02/Resolucion-034-2022-Sunafil-TFL-Primera-Sala-LPDerecho.pdf

Rodríguez Rescia, V. M. (1998). *El debido proceso legal y la Convención Americana sobre Derechos Humanos*. En *Liber Amicorum, Héctor Fix-Zamudio* (pp.1295-1328). Corte Interamericana de Derechos Humanos. http://biblioteca.corteidh.or.cr/tablas/a17762.pdf

Rojas López, J. G. (2009). El garantismo en el marco del derecho administrativo sancionado. *El Ágora USB*, *9*(2), 373-389. https://doi.org/10.21500/16578031.417

Salmón, E., y Blanco, C. (2012). *El derecho al debido proceso en la jurisprudencia de la Corte Interamericana de Derechos Humanos*. https://idehpucp.pucp.edu.pe/images/publicaciones/derecho_al_debido_proceso_en_jurisprudencia_de_corte_interamericana_ddhh.pdf

Texto Único Ordenado de la Ley N.° 27444. Ley del Procedimiento Administrativo General. (2021, 26 de julio). Ministerio de Justicia y Derechos Humanos. https://www.gob.pe/institucion/minjus/informes-publicaciones/2039342-texto-unico-ordenado-de-la-ley-n-27444-ley-del-procedimiento-administrativo-general

Correspondence

Heral Roger Amaro Caldas

heral.amaro@unmsm.edu.pe